

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI**

**ORDER SHEET**

No. Of Adjournment : 10

COURT NO. : 3  
13/11/2018  
O.A./3021/2017

CHITRA YADAV  
-V/S-  
M/O HUMAN RESOURCE DEVELOPMENT

ITEM NO:51

FOR APPLICANTS(S) Adv. :

Mr. S.K. Mohan and Mr. Rajesh Pandey

FOR RESPONDENTS(S) Adv.:

Mr. Anil Srivastava with Ms. Ritu Raj Biswas and Mr. Yash Kapoor for R-1  
Mr. Vijendra Singh for R-2

Notes of The Registry	Order of The Tribunal
	<p style="text-align: center;">Heard.</p> <p style="text-align: center;">OA is dismissed. Detailed order typed separately.</p> <p style="text-align: center;">( S N TERDAL) MEMBER (J)</p> <p style="text-align: center;">( NITA CHOWDHURY) MEMBER (A)</p> <p style="text-align: left;">/anjali/</p>

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI**

O.A. No.3021 of 2017

This the 13<sup>th</sup> day of November, 2018

**Hon'ble Ms. Nita Chowdhury, Member (A)**  
**Hon'ble Mr. S.N. Terdal, Member (J)**

Smt. Chitra Yadav, Age: 38 yrs  
W/o Shri Shishir Kumar Yadav and  
D/o Harshvardhan Yadav,  
r/o H.No.444/1, Kapashera,  
Shiv Mandirgali, Near Yadav Cloth House,  
Kapashera, New Delhi-110037.

....Applicant

(By Advocate : Shri S.K. Mohan and Shri Rajesh Pandey)

VERSUS

1. The Chairman,  
Central Board of Secondary Education (CBSE)  
(An autonomous organization under HRD Ministry),  
'Shikshakendra', 2, Community Centre,  
Preet Vihar, Delhi-110092.
2. Union of India,  
Through its Secretary,  
Ministry of Human Resource Development,  
Shastri Bhawan, New Delhi-110001.

.....Respondents

(By Advocate : Shri Anil Srivastava with Ms. Ritu Raj Biswas  
and Shri Yash Kapoor for R-1 & Shri Vijendra Singh for R-2)

**ORDER (Oral)**

**Ms. Nita Chowdhury, Member (A):**

Heard learned counsel for the applicant and learned  
counsel for the respondents and have also perused the  
material placed on record.

2. By filing this OA, the applicant is seeking the following  
reliefs:-

- “i) The records of the office and subsequent appeal/applications of the applicant made to Respondents may be called, and:
- ii) Direct the Respondents to set aside and quash the impugned order dated 29/30 June 2017, and;
- iii) Direct the Respondents to issue appointment order for the Post of Junior Accountant to the applicant along with other appointees in the notification dated 31 Dec 2015 and grant all the consequential benefits, seniority, promotion thereof and financial benefits in respect of his pay and other benefits as per rules.
- iv) Direct the Respondents to grant the appropriate compensation to the applicant for causing uncalled for harassment to the applicant.
- v) Pass any other order/relief/direction(s) may deem fit and proper in the interest of justice in favour of the applicant.”

3. Brief facts of the case are that applicant belongs to OBC category and aspiring for a job and on finding advertisement for the post of Junior Accountant in Central Board of Secondary Education, she applied online for appearing in the examination and she was allotted registration No.13017539. Thereafter applicant appeared in the written examination on 31.5.2015 in which she declared as qualified and was also allowed to appear in the interview which was scheduled to be held on 5.12.2015. However, based on the written test and interview a Notification dated 31.12.2015 was notified but the applicant and other OBC candidates were not found to have been appointed.

3.1 According to the applicant, she had cleared the written examination and had done very well in the interview.

However, she was shocked to know that her name did not appear in the list of candidates appointed.

3.2 Applicant further stated that her father-in-law through RTI sought information about the criteria of selection and other aspects vide RTI applications dated 21.4.2016, 27.5.2016, 16.7.2016 & 20.9.2016, which were replied vide replies dated 28.5.2016, 27.6.2016, 20.10.2016 and 8.12.2016. Through the said replies, the applicant came to know that she has secured 45.6% in the written exam, which is comparatively a high percentage considering the overall list. However, in the list of marks given to the candidates in interview column, it is evident that a colourable exercise has been adopted to eliminate all candidates of OBC category.

3.3 Applicant also stated that through the RTI, it also came to her knowledge that a changed criteria was adopted after the conducting of written test and interview. A copy of selection criteria adopted by the respondents reveals that a committee was formed for selecting candidates after the conduct of written test and interview.

3.4. The applicant made a representation vide her letter dated 21.12.2016 to the respondent no.1 and sought appointment to the post of Junior Accountant but the same was rejected vide impugned order dated 29/30.06.2017 (Annexure A/1).

3.5 Being aggrieved by the aforesaid impugned order, the applicant has filed the instant OA seeking the reliefs as quoted above.

4. Pursuant to notice issued to the respondents, respondent no.1 filed reply in which it is stated that based on the performance of candidates in the written test and interview, the Selection Committee recommended the names of the selected candidates. The applicant secured 52 marks in written examination which was held on 31.5.2015. The cut off was decided at 35 for OBC candidates as per Notice dated 6.11.2015. After the written examination, the applicant appeared for the interview and the final merit was prepared on the basis of consolidated marks 100 (80% weightage of marks obtained in written examination i.e.,  $52 \times 80\% = 41.6$ ) and 20% has been given for the interview in which the applicant secured 4 marks out of 20. Therefore, the applicant secured 45.6 marks in the selection process. Consequently, none of the advertised 11 posts in the OBC category have been filled during the selection process. Thereafter, the CBSE has issued a tender in May 2017 inviting applications for filling these posts on a contractual basis.

4.1 It is further stated that the Interview Board assessed the candidates solely on the basis of performance during the interview and independent of the candidate's performance in the written examination. It is also stated that as per the

advertisement published in 2013, it was clearly mentioned that ‘the management reserves the right to short list the candidates to be called on merit, experience, written and/or skill test.’ The same procedure has been followed by the Board for recruitment for other posts also.

4.2 It is further stated that based on the performance in the written test as well as in the interview, no candidate could meet the prescribed cut off marks of 55 for OBC category. Hence, neither the applicant nor other OBC candidates could be considered for appointment for the post of Junior Accountant. Further the criteria framed by the Board was applicable for all the candidates and same is not contrary to the principles of natural justice and fair play.

4.3 Lastly it is stated that instant OA deserves to be dismissed by this Tribunal.

5. The applicant has also filed her rejoinder in which she stated that the respondent no.1 has specifically removed the word ‘interview’ from the contents of the advertisement as the same are that “the Board reserves the right to short list the candidates to be called for interview by conducting written test/skill test etc.”. Further it is submitted that changing the criteria of recruitment after written test and interview is arbitrary and illegal.

6. During the course of hearing, counsel for the applicant reiterated the submissions as stated in the OA. Likewise counsel for the respondent no.1 also reiterated the submissions as stated in the counter affidavit.

7. The issue involved in this case is whether the criteria adopted by the respondents while conducting and finalizing the selection process of the post of Junior Accountant is justified or not.

8. It is an admitted fact that the respondent no.1 has issued a notice dated 6.11.2015, which reads as under:-

“The Board conducted written test at designated centres in Delhi and its Regional Offices at Allahabad, Chennai and Guwahati on 30.05.2015 and 31.05.2015 for the posts of Senior Accountant, Accountant and Junior Accountant. The cut off marks for each post are given hereunder:-

<b>S. No.</b>	<b>Name of the Posts</b>	<b>Cut off marks</b>
1.	Xxx	
2.	Xxx	
3.	Junior Accountant	UR=45, SC=35, ST=30, OBC=35

**Note:**

1. Result of the candidates appeared in the aforesaid test is given at Annexure-A.
2. The dates and venue for interview will be displayed in the CBSE’s website i.e. cbse.nic.in shortly.
3. The eligible candidates will be informed by e-mail for information. Call letters for interview will also be uploaded on the CBSE’s website i.e. cbse.nic.in shortly.
4. For further queries, if any mail to do.rc.cbse.hq@gmail.com.”

9. The selection criteria adopted by the Committee for filling up the post of Junior Accountant as under:-

“The vacancies for filling of the Jr. Accountant have been advertised and accordingly written test was conducted on 31.05.2015. After screening, the short listed candidates were called for interview on 04.12.2015 & 05.12.2015.

Based on the performance of candidates in written test and interview, the committee recommended the selection of candidates. 80% weightage has been given to written test and 20% has been given to interview. Cut off marks based on performance of candidates in written and interview for recommending the candidates for selection has been kept as follows:-

<u>Name of the post</u>	<u>Cut off Marks</u>			
	UR	BC	SC	ST
Jr. Accountant	60	<b>55</b>	55	50

10. However, as per the original advertisement issued for filling up the said post (page 31 of the paperbook), the candidates will have to secure a minimum marks in screening test to be called for interview. The details of minimum marks to be obtained in screening test are 60% for UR, 55% for OBC and 50% for SC/ST. Here we are concerned about the applicant who belongs to OBC category, we find from the written examination result that the applicant had secured 52 marks which are below the minimum marks required to be secured. But since none of the candidates of OBC category secured minimum marks, the respondents have issued the aforesaid notice whereby describing the cut off marks as quoted above. On the basis of aforesaid criteria, short-listed the candidates for appearing in the interview. Accordingly, the applicant was also short-listed on the above cut off marks criteria later on adopted by the respondents and the Committee recommended the selection of candidates based



on the performance of candidates in written test and interview and it has been recommended that 80% weightage has to be given to written test and 20% has to be given to interview and further cut off marks based on performance of candidates in written and interview for recommending the candidates for selection has been kept as follows:-

Name of the post	Cut off Marks			
	UR	BC	SC	ST
Jr. Accountant	60	<b>55</b>	55	50

11. From the above it is clear that required marks as indicated above have to be secured by a candidate to be appointed on the post in question. However, it is admitted fact that applicant has been awarded 41.6 marks, i.e., 80% of marks in written test and 4 marks, i.e., 20% of interview marks, which comes to 45.6, which are below the required marks for appointment to the said post. It is further relevant to note here that none of the OBC candidates has secured the minimum marks for appointment to the said post. As such none of the candidates was given appointment to the said post by the respondents. Further, it is a well settled principle of law that when a candidate applied for the post in question and also called for interview on the basis of relaxed cut-off marks and also the fact that Committee recommended that the candidature of the candidate has to be scrutinized on the basis of 80% marks in written test and 20% marks in

interview not for OBC category candidates only but also for all the other categories but minimum marks must be secured by the candidates as per the requirement of the advertisement, the applicant who admittedly not secured the minimum marks. As such the respondents have rightly not declared her successful for appointment to the said post.

12 It is relevant to note here the judgments of the Hon'ble Supreme Court on the issue involved in this case, which are as follows:-

(1) In ***Dr. G. Sarna vs. University of Lucknow & Ors.***, (1976) 3 SCC 585, the petitioner after appearing in the interview for the post of Professor and having not been selected pleaded that the experts were biased. The Apex Court did not permit the petitioner to raise this issue and held as follows :-

“15.We do not, however, consider it necessary in the present case to get into the question of the reasonableness of bias or real likelihood of bias as despite the fact that the appellant knew all the relevant facts, he did not before appearing for the interview or at the time of the interview raise even his little finger against the constitution of the Selection Committee. He seems to have voluntarily appeared before the committee and taken a chance of having a favourable recommendation from it. Having done so, it is not now open to him to turn round and question the constitution of the committee.....”

(2) In ***Madan Lal & Ors. vs. State of J&K & Ors.*** (1995) 3 SCC 486, the petitioner laid challenge to the manner and method of conducting viva-voce test after they had

appeared in the same and were unsuccessful. The Apex Court held as follows :-

“9.....Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or Selection Committee was not properly constituted.....”

(3) In ***Manish Kumar Shahi vs. State of Bihar***, (2010) 12 SCC 576, The Apex Court held as follows :-

“23.....Surely, if the petitioner’s name had appeared in the merit list, he would not have even dreamed of challenging the selection. The petitioner invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the petitioner clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition.”

(4) In the case of ***Ramesh Chandra Shah and others vs. Anil Joshi and others***, (2013) 11 SCC 309, the petitioners took part in the process of selection made under the general Rules. Having appeared in the interview and not being successful they challenged the method of recruitment itself. They were not permitted to raise such an objection. The Apex Court held as follows :-

“24. In view of the propositions laid down in the above noted judgments, it must be held that by having taken part in the process of selection with full knowledge that the recruitment was being made under the General Rules, the respondents had waived their right to question the advertisement or methodology adopted by the Board for making selection and the learned Single Judge and the Division Bench of the High Court committed grave error by entertaining the grievance made by the respondents.”

(5) Same view has been taken by the Apex court in ***Madras Institute of Development Studies and Another vs. Dr. K. Sivasubramaniyan and others.*** (2016) 1 SCC 454.

13. In view of the above facts and circumstances of the case and having regard to the ratio of the judgments of Apex Court (supra) on the issue involved in this case, this Court is of the considered view that the applicant cannot be permitted to challenge the selection process at the stage when she had already appeared in the interview and on the basis of unified criteria adopted by the respondents, she was declared unsuccessful.

14. In the result, for the foregoing reasons, the instant OA being devoid of merit is liable to be dismissed. Accordingly, the same is dismissed. There shall be no order as to costs.

**(S.N. Terdal)**  
**Member (J)**

**(Nita Chowdhury)**  
**Member (A)**

/ravi/